

EXHIBIT EEE

In The Matter Of:
INTELLECTUAL VENTURES I LLC, v.
CITIGROUP, INC., CITICORP,

March 26, 2015

Southern District Court Reporters

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x
4 INTELLECTUAL VENTURES I LLC,
5 and INTELLECTUAL VENTURES II
6 LLC,
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8 Plaintiffs,
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10 v. 14 Civ. 4638 (AKH)
11
12 CITIGROUP, INC., CITICORP,
13 CITIBANK, N.A.,
14
15 Defendants.
16 -----x
17
18 New York, N.Y.
19 March 26, 2015
20 10:45 a.m.
21
22 Before:
23 HON. ALVIN K. HELLERSTEIN,
24 District Judge
25
26 APPEARANCES
27
28 DUNNEGAN & SCILEPPI LLC
29 Attorneys for Plaintiffs
30 BY: WILLIAM DUNNEGAN
31 -and-
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34 CLAYTON THOMPSON
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44 -and-
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47 BRENT RAY
48
49
50

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1 intrinsic record.
2 Both parties' constructions have commonality in that
3 both parties' constructions for this term recognize that the
4 specification tells us that the parallel compression engine has
5 to work on more than one piece of data at a time, and that's
6 reflected by this recitation of the time component in both
7 parties' constructions.
8 THE COURT: That's differently phrased. You want
9 "more than one data unit at a time." Citibank wants "at the
10 same time."
11 I think "at the same time" is too restrictive. It's
12 clear to me that parallel is a term that's different from
13 sequential or serial, and that has to come across, but "at the
14 same time" I think is unduly restrictive.
15 Let me find the claim.
16 MR. ZOLOTOREV: Your Honor, perhaps we can put up
17 slide 4 which has the representative claim.
18 THE COURT: I'd rather use the printed version, but
19 you can put up whatever you want. The claim is "A data
20 compression system comprising: a plurality of parallel
21 compression engines, wherein each of the plurality of parallel
22 compression engines" -- I don't know what plurality means, by
23 the way. I think it's an excess term that confuses rather than
24 explains. It means more than one, few, many, but plurality
25 doesn't tell me anything.

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1 (In open court)
2 THE COURT: I'd like to work off the schedule, the
3 combined chart of proposed terms of constructions, unless
4 there's good reason to do something differently.
5 Mr. Lim.
6 MR. LIM: That's fine with Intellectual Ventures, your
7 Honor. We can go in that order.
8 THE COURT: Mr. Lantier.
9 MR. LANTIER: Yes, your Honor. That's how we planned
10 to proceed as well.
11 THE COURT: The first issue is the term various claims
12 of patent '271, "parallel data compression algorithm." IV
13 suggests "an algorithm in a parallel compression engine that
14 compresses more than one data unit at a time."
15 Citibank suggests "an algorithm that compresses data
16 across multiple processing units at the same time."
17 I don't really understand the substantive difference
18 between the two proposals, Mr. Lim. Do you?
19 MR. LIM: Mr. Zolotorev will address that issue on
20 behalf of Intellectual Ventures, your Honor.
21 THE COURT: Mr. Zolotorev.
22 MR. ZOLOTOREV: Your Honor, I think the substantive
23 difference with respect to this claim term is that the
24 defendants' construction introduces the term "processing
25 units," and we believe that term is not supported by the

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1 "...operates independently and implements a parallel
2 data compression algorithm," so it means that each processing
3 unit works independently of another.
4 MR. ZOLOTOREV: That's correct.
5 THE COURT: You could think about this in terms of
6 parallel wiring versus wiring in series; each parallel wire can
7 be switched on and off without affecting another. So, if you
8 have this room lit in parallel series, some lights can be off
9 and some lights can be on, and that means an
10 independently-processing system, and the same with what you're
11 doing.
12 So what's happening here is that the unit of data that
13 comes in from someplace else is accelerated at different speeds
14 in different lines, different parts of the processing system.
15 It comes out at the end in some coherent fashion. I think that
16 is what it means claimed. And the trick is to define these
17 terms in a way that is useful to each of you but not preclusive
18 of one against the other.
19 Continuing: "...wherein each of the plurality of
20 parallel compression engines is operable to: receive a
21 different respective portion of uncompressed data; and compress
22 the different respective portion of the uncompressed data using
23 the parallel data compression algorithm to produce a respective
24 compressed portion of the uncompressed data; and output the
25 respective compressed portion; wherein the plurality of

<p>f3qgintc Page 5</p> <p>1 parallel compression engines are configured to perform said 2 compression in a parallel fashion to produce a plurality of 3 respective compressed portions of the uncompressed data." 4 This is better than Ambien. Anyone who needs sleep, 5 read this three times. 6 So I'm asked to define the term "parallel data 7 compression algorithm." And I think I'll take Citibank's 8 construction: An algorithm that compresses data across I would 9 say a number of processing units at approximately the same 10 time. 11 MR. ZOLOTOREV: Your Honor, may I be heard on that. 12 THE COURT: Yes. What I want to do now is 13 extemporaneously tell you where my mind is. I will, in due 14 time, hopefully in a short time, express this in a tentative 15 order that I would plan to distribute to you and then hold 16 another session where you could react. I want to express my 17 view that I don't feel I understand these conventions at this 18 point in time well enough to have confidence in mostly anything 19 I do, so I'd like to do it in a suggestive way and see if it 20 makes sense. 21 So, your thought. 22 MR. ZOLOTOREV: The thought, the issue that we have, 23 the primary issue that we have with Citibank's construction, 24 even as modified by your Honor, is it still unnecessarily 25 recites processing units. This is not a term that is found</p>	<p>f3qgintc Page 7</p> <p>1 MR. RAY: Thank you, your Honor. The reason why 2 processing units is correct is because the specification shows 3 us in fairly clear detail what is meant contrasting serial 4 algorithms and parallel algorithms. 5 THE COURT: Can you do away with slides and just refer 6 to specifications? 7 MR. RAY: Absolutely. Your Honor, the specification 8 here in the '271 patent incorporates a reference. 9 THE COURT: Column? 10 MR. RAY: You're going to actually need to refer to an 11 exhibit to our brief. 12 THE COURT: I'm dealing with primary objects. I'm 13 dealing with a patent which has specifications and claims. 14 Tell me where in the specifications you want me to look. 15 MR. RAY: Your Honor, if you'll refer to the top of 16 column 7. 17 THE COURT: Yes. 18 MR. RAY: There's a section for incorporation by 19 reference. There's a patent number 6,208,273. In that 20 specification, which is incorporated expressly by reference 21 into the '271 patent, is found a very clear drawing of what is 22 meant between a serial compression algorithm and a parallel 23 compression algorithm. 24 THE COURT: But we're not dealing with that in this 25 definition.</p>
<p>f3qgintc Page 6</p> <p>1 anywhere in the claims or anywhere in the specification. 2 Whereas, the construction that we propose, your Honor, if we go 3 to slide 6, is based on a very clear statement in the 4 specification where the inventors tell us exactly what this 5 algorithm is. They say the parallel compression algorithm 6 operates on parallel of symbols at a time and that is 7 essentially our construction. 8 And they also said, and this is where they're 9 distinguishing -- 10 THE COURT: How about, Mr. Zolotorev, instead of the 11 words "across multiprocessing units," I say "for processing by 12 several processing units"? 13 MR. ZOLOTOREV: Your Honor, again, this is the same 14 exact issue. The term "processing units" is superfluous, it's 15 not in the claims, it's not anywhere in the specification, and 16 therefore it is completely divorced from the intrinsic record. 17 And that is the issue we have. 18 We have this very clear statement in the specification 19 as to what the algorithm is, the compression algorithm is, and 20 the inventors make this statement and they distinguished the 21 prior art. That's the very next line. They said this is how 22 this is different than the prior art serial algorithm, so it 23 tells all we need to know about what this term means. 24 MR. RAY: If I may respond to that. 25 THE COURT: Yes, Mr. Ray.</p>	<p>f3qgintc Page 8</p> <p>1 MR. RAY: Your Honor, a specification that is 2 incorporated by reference as explicitly as this one is deemed 3 to be part of the specification of the same patent. And we 4 have attached this patent as an exhibit to our brief, and I'm 5 happy to hand up a copy if you'd like, your Honor. 6 THE COURT: Don't. Okay. I'll work it out. Thanks. 7 Next point. 8 MR. RAY: The next point I wanted to make, your Honor, 9 is a term of the construction that is not found in the spec, we 10 disagree. And I would contrast IV's construction which refers 11 to a data unit; that is, likewise, not found in the 12 specification as well. The proposed construction that you had 13 originally set forth, Citibank would agree with. 14 MR. ZOLOTOREV: Your Honor, may I be heard. 15 THE COURT: Yes. I'll tell you what. Sit down; that 16 way you won't block your colleagues in the back. 17 MR. ZOLOTOREV: Your Honor, this last criticism of the 18 term data unit I think is misplaced. It is clearly present in 19 the specification. The specification uses the term "unit of 20 data." That's at column 8 lines, 29 through 31. And, 21 likewise, the specification provides us with a number of 22 different examples of what a unit of data to be compressed 23 would be in different embodiments. Some embodiments refer to 24 symbols, others operate on characters, others operate on units 25 of data that could be bytes or several bytes that are variable</p>

<p>f3qgintc Page 9</p> <p>1 in length. And then, again, for decompression, we see the 2 specification in certain embodiments using the term "token" 3 which we discussed yesterday, and that is the symbol that is 4 assigned to a compressed symbol, so that becomes a token. 5 THE COURT: I have another definition. I tell you, I 6 want these definitions, to the greatest extent possible, to 7 avoid using terms that in turn need to be defined. There's no 8 reason to define something for informational purposes in a way 9 that creates another ambiguity. 10 Here is another proposal: An algorithm that causes 11 aspects of information which are to be encrypted to pass 12 through various processing units at approximately the same 13 time. 14 Let's go on to the next. We'll give that further 15 thought and come out with a tentative order, and then you can 16 react to it. 17 The next term is "parallel data decompression 18 algorithm." It's the same point. I think it's the same 19 definition. Let's go on now to patent '081. 20 The parties want me to take a position as to whether 21 preambles are limiting or not limiting. It has nothing to do 22 with Markman. I'm not doing it. You'll argue the way you 23 want. 24 The second is the phrase "primary record type," claims 25 1, 2 and others. The parties differ on whether or not there</p>	<p>f3qgintc Page 11</p> <p>1 THE COURT: You're reversing what I'm thinking. 2 MR. THOMPSON: Exactly. 3 THE COURT: So you have "primary," which connotes 4 superiority ahead of "management," which connotes something 5 utilitarian implementing something that's primary. 6 MR. THOMPSON: If you think of an outline, though, 7 like of an argument, the primary things I'm saying are the 8 points I'm making like here's a fact, here's a fact, and here's 9 a fact, and I manage those facts with a heading, that would 10 analogize the phraseology of that. 11 THE COURT: No. The reverse, just the reverse. When 12 you're arguing the points in the brief, the points in the brief 13 are the major headings, primary headings; and the arguments are 14 subsidiary. 15 MR. THOMPSON: Well, I'd say the headings under which 16 they appear is the management of them, is the management of 17 those primary points. 18 THE COURT: The primary points in your analogy are the 19 management of a more major point, namely I should win, here are 20 the primary reasons, one, two, three, four, five; and to 21 explain the primary reasons, here are the subsidiary reasons. 22 The whole concept is a management, which leads me to believe 23 that we have a nonsensical arrangement of words here, phrases. 24 We can't do that. 25 Line 20, column 18 states "organizing instances of the</p>
<p>f3qgintc Page 10</p> <p>1 should be a reference in the definition as IV proposes "to 2 contain data extracted from XML documents." The problem here 3 is that the term that I'm asked to define is not fairly 4 presented. What I'm asked to define is a longer phrase, not 5 just primary record types, but primary record types for the XML 6 documents, and so the term which is to be defined is different 7 from the way it's set out to me. And then if I do that, 8 there's agreement. "A data type that defines a data 9 structure." However, I don't think that's very helpful. 10 So, what is connoted here I think is the beginning of 11 a hierarchy. If one thinks of an outline, it's the major 12 proposition to be followed by various subsidiary propositions, 13 and as I understand what is meant by "primary record type," it 14 makes reference to the major proposition or a number of major 15 propositions appended to which would be subsidiary 16 propositions. 17 Do I have it right, Mr. Lim? Who is going to speak to 18 me on this one? 19 MR. THOMPSON: Mr. Thompson, and I should stay seated? 20 THE COURT: Yes, you should stay seated. 21 MR. THOMPSON: Thank you. Very close and I think very 22 apt, but the primary record types are more like the factual 23 underpinnings in your analogy and the management record type 24 would be the heading. You have the right idea; it's just the 25 primary record types are kind of in --</p>	<p>f3qgintc Page 12</p> <p>1 plurality of primary record types into a hierarchy to form a 2 management record type; defining a dynamic document for display 3 of an instance of the management record type through a user 4 interface." 5 Claim 2, lines 30 to 35 may help: "A method as in 6 claim 1, wherein an instance of a one of the primary record 7 types includes or points to a relationship database table of 8 that primary record type; and wherein the instance of the 9 management record type points to instances of the primary 10 record types." 11 Three, "A method as in claim 1, wherein the management 12 record type defines business objects and the instances of the 13 management record type comprises the business objects." 14 I can't make heads or tails of this. Mr. Thompson, 15 help me with the specifications. 16 MR. THOMPSON: Very good, your Honor. So, you have to 17 think about the patent as building a structure and it's going 18 to start with, let's say, bricks, and as the bricks are placed 19 and they're formed, they are then mortared into place with the 20 management record type. So, these bricks are just the pieces 21 of data that came -- the little components of data that came 22 out of the XML document. So, you take the XML document and you 23 make it into little pieces, little bricks, while maintaining 24 how the data related to itself, the little pieces related to 25 the other little pieces in the XML, you maintain that</p>

<p>f3qgintc Page 13</p> <p>1 relationship by the arrangement of the bricks. And then the 2 management record type, with its pointers, solidifies or puts 3 that in concrete so that that information about the arrangement 4 of the primary record types is maintained in the management 5 record type. 6 THE COURT: What in the specifications let's you say 7 these things? 8 MR. THOMPSON: It's described succinctly twice. What 9 I'd like to do is, I'd like to go to column 3, line 66. And 10 this description of what I just discussed goes up to about 11 column 4, line 23, if I could walk through it with you. 12 THE COURT: Let me read it. 13 MR. THOMPSON: Okay. 14 THE COURT: So the primary record types are the data 15 components in an XML document. 16 MR. THOMPSON: Correspond to it; they're not one in 17 the same, but -- 18 THE COURT: All right. Say "correspond." 19 MR. THOMPSON: Well, I say that because the data 20 component -- the primary record type is not so much in the XML 21 document as it is of data copied from the XML document. So, 22 it's a new thing separate from the XML. 23 THE COURT: You copied the XML data components into 24 normalized data objects. 25 What does that mean?</p>	<p>f3qgintc Page 15</p> <p>1 object, the claim is clear that there is something different 2 between the record type itself and an instance of that record 3 type. And as we'll get to, your Honor, that causes these 4 claims to be indefinite. 5 THE COURT: You'll argue that at some other point. 6 It's my duty now at this time to see if I can define it. 7 How about this, Mr. Thompson: The primary record 8 types are units of information on business documents that are 9 to be collected and arranged for a user. The management record 10 type is the manner of collection and arrangement of these units 11 of information. 12 MR. THOMPSON: I think we can work from that, your 13 Honor. 14 MR. RAY: Your Honor, I would again suggest that the 15 types, the management record types and the primary record 16 types, again are separate from the data within the XML document 17 and that's also clear from the claim as you picked up right off 18 the bat, your Honor. 19 THE COURT: I don't think so. In an XML document are 20 purchase orders, invoices, bills of material, bills of lading, 21 other types of business documents. The alleged invention 22 teaches a way of organizing this information so that it can be 23 used by people across various kinds of interfaces. And if I 24 can define these terms in a meaningful way, I'd like to do it. 25 The problem with the suggested definitions is they are circular</p>
<p>f3qgintc Page 14</p> <p>1 MR. THOMPSON: Normalized means that the XML data 2 components are analyzed to take out duplicates at a very high 3 level. That's what normalized means. 4 THE COURT: So what you're suggesting here, I think, 5 is that the information or data units in a number of business 6 documents, for example, invoices, bills of material, purchase 7 orders and the like are collected and arranged in a way that is 8 conducive to what users want and the information taken from the 9 invoices, bills of material and the like are the primary record 10 types and the collection and arrangement is the management 11 record type? 12 MR. THOMPSON: I think that's a fair summary of what 13 the primary record type is. 14 THE COURT: Defendants. 15 MR. RAY: Your Honor, I think it's at this point in 16 time important to take note of the difference between data 17 types and instances of data types and in your Honor's review of 18 the claims, I think this is revealing, and if I may offer an 19 analogy that I think is more accurate here. 20 You might think of a primary record type as a blank 21 form and an instance of a primary record type being a filled-in 22 form. There is a difference between capturing the structure of 23 data and capturing the data itself, and the claim refers to 24 both types. So while I agree with part of what Mr. Thompson is 25 saying about the proximity of a primary record type to a data</p>	<p>f3qgintc Page 16</p> <p>1 and at the risk of creating an erroneous definition, I'd like 2 to try to define these concepts in a way that makes it easier 3 to understand, so we'll work with what I have. 4 The next in the same patent is "organizing instances 5 of the plurality of primary record types into a hierarchy to 6 form a management record type." 7 IV says it's okay as is. Citibank says I can't define 8 it because it's too difficult to understand. I think we'll 9 leave it the way it is for whatever it's worth. 10 Next we go to the '666 patent. 11 MR. RAY: If I might be heard again on the term 12 "organizing." 13 THE COURT: Sure. 14 MR. RAY: The reason why this term is indefinite, and 15 I know it's a subtle difference but it's an important one, is, 16 again, because the specification in the claim makes a 17 difference between data types and instances of -- 18 THE COURT: I'm going to interrupt, Mr. Ray. 19 The Markman hearing is not the moment for me to 20 declare something is indefinite or not. You'll make a motion 21 under Section 112. I'm telling my age. It was an earlier 22 number it's a new number now. You'll make a Section 112 motion 23 that the patent is void for indefiniteness and you'll make this 24 argument. Maybe I'll agree, and maybe I won't agree. At this 25 point, I'm trying to define.</p>

<p>f3qgintc Page 17</p> <p>1 MR. RAY: Understood.</p> <p>2 THE COURT: We now pass to the '666 patent.</p> <p>3 Do we have incidentally a number of students from the</p> <p>4 New York Law School?</p> <p>5 THE PROFESSOR: Yes, your Honor.</p> <p>6 THE COURT: I don't know. Are you succeeding in</p> <p>7 following this?</p> <p>8 THE PROFESSOR: Yes, your Honor.</p> <p>9 THE COURT: How would it be if I changed places with</p> <p>10 you?</p> <p>11 THE PROFESSOR: I would not mind doing that. I don't</p> <p>12 think either the plaintiffs or the defendants would like my</p> <p>13 bill.</p> <p>14 THE COURT: They wouldn't like your robe. You may sit</p> <p>15 down.</p> <p>16 THE PROFESSOR: Thank you.</p> <p>17 THE COURT: Nice to have you here. Who is your</p> <p>18 teacher?</p> <p>19 THE PROFESSOR: It is me, your Honor.</p> <p>20 THE COURT: Is it "I."</p> <p>21 THE PROFESSOR: Thank you, your Honor.</p> <p>22 THE COURT: All right, the '666 patent. You'll be</p> <p>23 called upon to do a critique of this session afterwards off the</p> <p>24 record. Okay. We're on the '666 patent.</p> <p>25 The first term to be defined is "multiplication unit"</p>	<p>f3qgintc Page 19</p> <p>1 THE COURT: Did he have an interest in the patent at</p> <p>2 the time he testified or had he assigned it?</p> <p>3 MR. RAY: He had assigned it already, your Honor.</p> <p>4 THE COURT: So what rule of evidence allows me to do</p> <p>5 this?</p> <p>6 MR. RAY: This is testimony that in contrast --</p> <p>7 THE COURT: What rule of evidence allows me to take it</p> <p>8 into consideration? How is it competent evidence?</p> <p>9 MR. RAY: It's competent evidence because it's an</p> <p>10 expression of the inventor's description.</p> <p>11 THE COURT: Subjective intent of the inventor is not</p> <p>12 critical to --</p> <p>13 MR. RAY: It's not subjective intent, and this is what</p> <p>14 I wanted to clarify about the description of this yesterday.</p> <p>15 He did not have the claim language before him when he was</p> <p>16 answering questions about how the multiplication unit worked.</p> <p>17 Instead, he had a drawing before him from the patent and was</p> <p>18 asked what does this do, how does this work, what does this do,</p> <p>19 how does this work? And he went step-by-step through figure 5</p> <p>20 of the patent which shows all of the elements of the</p> <p>21 multiplication unit and what came out of that is that though</p> <p>22 those units all do their own subtests, the purpose of the unit</p> <p>23 was solely multiplication. And figure 5 is before you right</p> <p>24 now, your Honor.</p> <p>25 This is not a subjective intent, if you will, your</p>
<p>f3qgintc Page 18</p> <p>1 in claim 4. Claim 4 claims that "A crypto-engine for</p> <p>2 cryptographic processing of data comprising an arithmetic unit</p> <p>3 operable as a coprocessor for a host processor and an interface</p> <p>4 controller for managing communications between the arithmetic</p> <p>5 unit and host processor, the arithmetic unit including: a</p> <p>6 memory unit for storing and loading data; a multiplication</p> <p>7 unit, addition unit and a sign inversion unit for performing</p> <p>8 arithmetic operations on said data, the multiplication unit,</p> <p>9 addition unit and sign version unit each having an output," and</p> <p>10 so on.</p> <p>11 The parties differ very slightly. IV wants to define</p> <p>12 "multiplication unit" as a unit that performs multiplication.</p> <p>13 Citibank wants to define it as a unit that solely performs</p> <p>14 multiplication.</p> <p>15 The word "solely" is not needed to define the term and</p> <p>16 I'll accept IV's construction.</p> <p>17 MR. RAY: If I may.</p> <p>18 THE COURT: Yes, Mr. Ray.</p> <p>19 MR. RAY: May I direct you to the inventor testimony</p> <p>20 on this topic, and I know this came up briefly yesterday.</p> <p>21 THE COURT: Whose testimony?</p> <p>22 MR. RAY: This is the inventor of the '666 patent.</p> <p>23 THE COURT: Did he have an interest at the time he</p> <p>24 testified?</p> <p>25 MR. RAY: I'm sorry, your Honor.</p>	<p>f3qgintc Page 20</p> <p>1 Honor. This is merely the inventor's description as to how</p> <p>2 figure 5 worked.</p> <p>3 THE COURT: Howmedica Osteonics Corp. v. Wright</p> <p>4 Medical Tech., 540 F.3d 1337 (Fed. Cir. 2008) at page 1346 in</p> <p>5 doing a gloss of Markman, it states as follows: "The testimony</p> <p>6 of an inventor 'cannot be relied on to change the meaning of</p> <p>7 the claims,'" citing Markman. And in parenthesis, ("Markman</p> <p>8 requires us to give no deference to the testimony of the</p> <p>9 inventor about the meaning of the claims.") In particular, we</p> <p>10 have explained that "[t]he subjective intent of the inventor</p> <p>11 when he used a particular term is of little or no probative</p> <p>12 weight in determining the scope of a claim." Markman, 52 F.3d</p> <p>13 at 985.</p> <p>14 MR. RAY: Yes.</p> <p>15 THE COURT: It's the same rule as in contracts the</p> <p>16 objective manifestation of a word if it can be understood is</p> <p>17 the way that that document has to be understood. The extrinsic</p> <p>18 evidence is that which is manifested to another. The private</p> <p>19 view of the inventor after a period of time when he no longer</p> <p>20 has a financial interest in the invention is of little or no</p> <p>21 use, but let me listen to your argument and for whatever it's</p> <p>22 worth, I'll take it into consideration.</p> <p>23 MR. RAY: Thank you. I have two points to make. One,</p> <p>24 again, this is not a subjective intent of the inventor as to</p> <p>25 what he meant by the term. This was merely a walk-through,</p>

<p>f3qgintc Page 21</p> <p>1 step-by-step as to how the alleged invention worked.</p> <p>2 THE COURT: What is the claim supposed to do? The</p> <p>3 claim is supposed to be a description of an invention that is</p> <p>4 claimed to be the invention.</p> <p>5 MR. RAY: It is, your Honor, but he was not asked what</p> <p>6 did you mean by multiplication unit. He was asked what the</p> <p>7 multiplication unit described in the specification, how does it</p> <p>8 work, step by step, element by element. That's not subjective</p> <p>9 intent, your Honor, I would say; that is instead a person of</p> <p>10 skill in the art, the inventor, providing relevant testimony as</p> <p>11 to how the alleged invention works.</p> <p>12 THE COURT: What's your other argument?</p> <p>13 MR. RAY: My second argument, your Honor, is that he</p> <p>14 is a person of skill in the art. He is qualified to look at</p> <p>15 the specification and give testimony on it, and you are</p> <p>16 entitled to give weight to that.</p> <p>17 We have federal circuit cases that we have seen as</p> <p>18 well that uphold the district court's reliance on inventor</p> <p>19 testimony as part of the claim construction process.</p> <p>20 THE COURT: I'll consider it along with everything</p> <p>21 else. I'm not adding the word "solely."</p> <p>22 MR. RAY: If I may make one other argument in addition</p> <p>23 to the inventor testimony that I think is relevant. Yesterday,</p> <p>24 when we talked about this claim reciting a device, and you had</p> <p>25 asked Mr. Lim about how the device does that with this alleged</p>	<p>f3qgintc Page 23</p> <p>1 Am I correct that the host processor is the computer</p> <p>2 containing the information that is to be encrypted with the</p> <p>3 invention being in effect an accelerator of the encryption</p> <p>4 process, Mr. Lim?</p> <p>5 MR. LIM: Yes, your Honor, that's correct.</p> <p>6 MR. RAY: I disagree. The host processor is something</p> <p>7 that communicates information and signals to the cryptographic</p> <p>8 coprocessor, but it is only described as an ancillary element.</p> <p>9 And the relevant --</p> <p>10 THE COURT: It's ancillary because it comes before.</p> <p>11 The accelerator is what makes it faster and the invention</p> <p>12 teaches how that is to be done, or is supposed to teach us how</p> <p>13 that is to be done, namely, how the acceleration works. The</p> <p>14 host processor is a fancy word for saying that which comes</p> <p>15 before, the computer containing information that comes before.</p> <p>16 Show me the specifications, Mr. Lim, or whoever is</p> <p>17 arguing this point.</p> <p>18 MR. LIM: Sure. We can go to figure 1, your Honor. I</p> <p>19 think that picture would easily address this point. On the</p> <p>20 very left-hand side of figure 1, it refers to a host processor</p> <p>21 that is communicating with the coprocessor. So if you see the</p> <p>22 very left-hand side of this figure, it says "to host</p> <p>23 processor," so that's what the claim is referring to. That's</p> <p>24 the communication that happens between the host processor and</p> <p>25 the coprocessor.</p>
<p>f3qgintc Page 22</p> <p>1 hardware. I would argue, your Honor, that this is exactly what</p> <p>2 is contemplated by the claims in the terms multiplication unit,</p> <p>3 addition unit and sign inversion unit; that if we have to have</p> <p>4 a device that, in fact, is able to do RSA and ECC more</p> <p>5 efficiently, then those devices, in fact, do just one thing,</p> <p>6 that those math units, in fact, do one function.</p> <p>7 THE COURT: Mr. Ray, it may be the case, it probably</p> <p>8 is the case, and probably there's no difference between the two</p> <p>9 definitions.</p> <p>10 If a device does multiplication, by implication it</p> <p>11 doesn't do anything else. So you can argue it, but I'm not</p> <p>12 putting in the definition. That is the same point for addition</p> <p>13 unit and the same for sign inversion unit, that is, that which</p> <p>14 changes a positive number to a negative number and a negative</p> <p>15 number to a positive number.</p> <p>16 We're up to the term of "host processor" in claim 4.</p> <p>17 The parties differ on that. IV proposes "A central processing</p> <p>18 unit that runs the computer system." Citibank proposes "the</p> <p>19 processor that drives the cryptographic coprocessor."</p> <p>20 Claim 4 reads "A crypto-engine for cryptographic</p> <p>21 processing of data," etc. I read that before. I'll read it</p> <p>22 again. "A crypto-engine for cryptographic processing of data</p> <p>23 comprising an arithmetic unit operable as a coprocessor for a</p> <p>24 host processor and an interface controller for managing</p> <p>25 communications between the arithmetic unit and host processor."</p>	<p>f3qgintc Page 24</p> <p>1 THE COURT: What is the host processor? I don't think</p> <p>2 I'm right. I don't think it's simply the computer before. As</p> <p>3 a host processor, it must have begun the process of</p> <p>4 cryptographic encryption.</p> <p>5 MR. LIM: The host processor is the main processor</p> <p>6 that runs the main computer, and that's the Court's definition</p> <p>7 from the JPMC case that we discussed last time. So, its job is</p> <p>8 to run the entire computer. When it has to do intensive</p> <p>9 encryption operations, it basically delegates that</p> <p>10 responsibility to the crypto-engine, the coprocessor.</p> <p>11 THE COURT: I don't remember the process by which we</p> <p>12 came to that definition with Chase, but let's do it again.</p> <p>13 MR. LIM: If we can look at the claim language that</p> <p>14 your Honor just read.</p> <p>15 THE COURT: Look at the specifications.</p> <p>16 MR. LIM: Okay.</p> <p>17 THE COURT: Where is the term used?</p> <p>18 MR. LIM: I can show you that.</p> <p>19 THE COURT: While we do that, Mr. Lim, for the benefit</p> <p>20 of the students, the patent document has a number of</p> <p>21 components. First, there are drawings, basically drawings, and</p> <p>22 then there are specifications describing the context of the</p> <p>23 patent, the prior art and giving the reader an understanding of</p> <p>24 what is going on by the patent with the invention and the like.</p> <p>25 Then there are the claims, and the claims define what it is</p>

<p>f3qgintc Page 25</p> <p>1 that is an invention.</p> <p>2 There's a tension doing claims between accuracy</p> <p>3 between accuracy and generality. The inventor wants his claim</p> <p>4 to cover as much area as possible to get maximum protection</p> <p>5 from the patent monopoly; however, since patents are an</p> <p>6 exception to the general policy favoring competition, the</p> <p>7 claims have to be limited to just what is convention.</p> <p>8 The concept of a patent monopoly is an exchange. It's</p> <p>9 an exchange that offers the inventor an incentive to publicly</p> <p>10 disclose his invention for the benefit of all others and, in</p> <p>11 exchange, a limited monopoly is given for a term of years.</p> <p>12 The writer of the patent wants to be as embrative as</p> <p>13 possible; the patent office and the judge would like to try to</p> <p>14 limit it fairly; and the alleged infringer would like to narrow</p> <p>15 it to the greatest extent possible so that the practice that</p> <p>16 the alleged infringer is using falls outside of the patent.</p> <p>17 That's the tension, the dynamic that goes into it.</p> <p>18 It's my job as a judge to try to give a definition to</p> <p>19 the patent in ways that make it understandable. We have a lot</p> <p>20 of compound words. Patent-writing is not considered the</p> <p>21 equivalent of a literature lesson. To say the least, they're</p> <p>22 very difficult to read. That may be the game, I don't know,</p> <p>23 but I'm supposed in a Markman hearing, which is supposed to</p> <p>24 come at the beginning of the case, to give a fair definition to</p> <p>25 the terms, and that definition will then hold for the rest of</p>	<p>f3qgintc Page 27</p> <p>1 3, line 2, and if I may read this part of that specification.</p> <p>2 THE COURT: Yes.</p> <p>3 MR. LIM: It starts with "referring to figure 1,"</p> <p>4 that's the figure I just showed the Court earlier, "the</p> <p>5 preferred embodiment of a compact crypto-engine 10 comprises a</p> <p>6 modular arithmetic unit (MAU) 11."</p> <p>7 THE COURT: Leave out the numbers.</p> <p>8 MR. LIM: "...and an interface control unit. The</p> <p>9 inputs and outputs of the ICU," which is interface control</p> <p>10 unit, "are provided from/to a host processor" continuing on to</p> <p>11 the top of column three "(not shown)" and then it gives</p> <p>12 examples, "such as a personal, network computer or digital</p> <p>13 signal processor."</p> <p>14 So there, the specification provided several examples</p> <p>15 of what a host processor can be, and the Court's previous</p> <p>16 construction is consistent with these examples.</p> <p>17 MR. RAY: Your Honor --</p> <p>18 THE COURT: One minute. I shouldn't say "that runs</p> <p>19 the computer system."</p> <p>20 I could say a personal, network computer or digital</p> <p>21 signal processor containing information that is to be</p> <p>22 encrypted, and which delivers its signal to the coprocessor</p> <p>23 that is the subject of the invention.</p> <p>24 MR. LIM: That would be fine, your Honor.</p> <p>25 THE COURT: Mr. Ray.</p>
<p>f3qgintc Page 26</p> <p>1 the case and will guide the parties in their discovery, in</p> <p>2 their various kinds of motions.</p> <p>3 There was an example, for example, Mr. Ray used the</p> <p>4 term of "indefiniteness." You know under Section 112 of the</p> <p>5 patent laws, the invention has to be described and there are</p> <p>6 terms of description. Part of the battle here is to define it</p> <p>7 in a way that exposes the indefiniteness; that's goal of the</p> <p>8 defendant. So there are constant tensions that have to be</p> <p>9 understood. As a judge, I want to free my mind of all of</p> <p>10 these. I want to just do the definitional part and whatever</p> <p>11 happens after that will happen.</p> <p>12 In bringing us to this point, I have a procedure which</p> <p>13 starts with a tutorial where I learn the patent, that occurred</p> <p>14 yesterday, and the parties have prepared a schedule of four</p> <p>15 columns. The first column is the term and the phrase, that's</p> <p>16 the terms and phrases that are used in the claim itself; and</p> <p>17 the second and third column are the parties' alternative views</p> <p>18 of what should be appropriate - I see you have it in front of</p> <p>19 you - and the last column is for me to define it in an order</p> <p>20 that will issue.</p> <p>21 Mr. Lim, have you had a chance to find what you need</p> <p>22 to?</p> <p>23 MR. LIM: Yes, your Honor. May I refer the Court's</p> <p>24 attention to column 2 starting with line 64, that's the</p> <p>25 beginning of the paragraph, and we will go to the top of column</p>	<p>f3qgintc Page 28</p> <p>1 MR. RAY: Your Honor, the issue I have with that</p> <p>2 construction, and with all due respect to the construction that</p> <p>3 was set forth in JPMorgan, is that it does not define the term</p> <p>4 as helpful to the finder of fact as to the host processor in</p> <p>5 the context of the claim. A host processor is defined by its</p> <p>6 relationship to the coprocessor, and that is the subject of the</p> <p>7 claim, the crypto-engine itself.</p> <p>8 The definition that we have proposed, the processor</p> <p>9 that drives or run, either is fine, the cryptographic</p> <p>10 coprocessor --</p> <p>11 THE COURT: It really doesn't run. The host processor</p> <p>12 does not run the cryptographic processor. It feeds</p> <p>13 information.</p> <p>14 MR. RAY: Yes, signals and information that allows the</p> <p>15 coprocessor to run.</p> <p>16 THE COURT: That wouldn't do it. A processor that</p> <p>17 delivers signals or information which the cryptographic</p> <p>18 coprocessor then accelerates. That could be a suitable</p> <p>19 definition also.</p> <p>20 MR. RAY: Would you repeat it, your Honor.</p> <p>21 (Record read)</p> <p>22 THE COURT: Can you deal with that, Mr. Lim?</p> <p>23 MR. LIM: That would be fine.</p> <p>24 MR. RAY: Your Honor, my only issue with that is that</p> <p>25 it does not place the host processor in the proximity to the</p>

<p>f3qgintc Page 29</p> <p>1 coprocessor that I think that the host processor is talking 2 about. 3 THE COURT: How about putting the word "directly," 4 whether it's information or signals directly? 5 MR. RAY: That would be fine, your Honor. 6 MR. LIM: If I may, that's actually too restrictive. 7 If you look at the claim, there's no requirement that the 8 coprocessor -- 9 THE COURT: I agree with you, Mr. Lim. 10 MR. LIM: Thank you. 11 THE COURT: We'll leave that word out. I think it is 12 suggested by the definition and there's nothing in the claims 13 that deal with how close they have to be together. All right. 14 We have that. 15 Next is "op-code signal," claim 4. 16 MR. LIM: This term is agreed, your Honor. 17 THE COURT: That's agreed? 18 MR. LIM: Yes. 19 THE COURT: The next term is "high frequency 20 manipulated data." The difference is the word "rate." My 21 definition previously was data operated on at a high rate, and 22 Citibank would like to substitute "higher clock speed." 23 I think "rate" is good enough and probably more 24 accurate because clock speed suggests seconds, minutes and 25 hours, and the rate of speed can be in different units.</p>	<p>f3qgintc Page 31</p> <p>1 manipulated data, as well. 2 We're now moving on to '002, and the first claim is 3 mobile interface. IV suggests "a user interface accessible on 4 different computing devices and capable of dynamically 5 accessing user specific data stored on a network server and 6 local device." 7 Citibank thinks the term is indefinite, but just in 8 case suggests the term should be given its plain meaning, "an 9 interface operable to move from one local device to another." 10 As its stated in the patent, I'll read it, first 11 claim: "A method for retrieving user specific resources and 12 information stored either on a local device or a network 13 server, the method comprising the steps of: Retrieving a 14 mobile interface from the network server to the local device; 15 displaying the mobile interface on the local device, the mobile 16 interface including a plurality of pointers corresponding to 17 the user specific resources and information; and retrieving the 18 user specific resources and information using the plurality of 19 pointers displayed on the mobile interface." 20 I'm going to work with the Citibank-suggested 21 instruction being: An interface allowing the user to select 22 files from various computing devices. 23 Can you live with that, Mr. Lim? 24 MR. BOHL: Nicholas Bohl for plaintiff. I'll be 25 handling this one.</p>
<p>f3qgintc Page 30</p> <p>1 MR. RAY: As an initial matter, I don't believe you 2 construed this term before. This was not in the JPMorgan case, 3 so this is a term of first impression for your Honor. So, I 4 was mentioning that this is not a term that you've construed 5 before. This is a term of first impression for your Honor. 6 The reason why clock speed is correct over rate is 7 that the clock speed is how processors keep data in sync. And, 8 remember, this is a device claim. So, we have a processor on 9 one hand, a cryptographic coprocessor, a host processor on the 10 other hand and our other hand. 11 The clock speed of the processor is something that we 12 know as those processors sit in our hands; it's a known way to 13 measure the frequency, high or low, between the data in those 14 elements. We don't need to actually run them to know that. 15 And it's important to bear that in mind because claim 4 is a 16 device claim, not a method claim. 17 THE COURT: We can say rate of speed; that's probably 18 better. We'll use rate, we'll use rate of speed rather than 19 clock speed, higher rate of speed. 20 MR. RAY: If I may again mention, you had mentioned 21 clock connotating hours, minutes. That is, I would say, not 22 necessarily accurate. 23 THE COURT: I'm not going to go with clock. I don't 24 think it adds anything that's meaningful. Rate of speed is 25 what it is, and that will control the lower frequency</p>	<p>f3qgintc Page 32</p> <p>1 THE COURT: All right, Mr. Bohl. 2 MR. BOHL: It might be too restrictive in the sense of 3 files inasmuch -- 4 THE COURT: What would you like instead of "files"? 5 MR. BOHL: "User specific data" is what we had or we 6 could say perhaps "user information" with the understanding 7 that it encompasses what is discussed in the patent. 8 THE COURT: Why can't it be called a file? In 9 computer law, we use files. 10 MR. BOHL: The patent office also talks not just about 11 retrieving files but also bookmarks or user information such 12 as -- 13 THE COURT: Files and other information? 14 MR. BOHL: That's fine, your Honor. 15 THE COURT: An interface allowing a user to select 16 files and other information from various computing devices. 17 We haven't captured the word "mobile." 18 MR. BOHL: I think by your Honor saying "from various 19 computing devices" that that captures the word "mobile" in the 20 sense that the patent means to use it. The idea here is that I 21 can ask -- 22 THE COURT: No, not at all. The interface can be 23 stable at a point in different places. 24 MR. BOHL: That's how I would say that the patent uses 25 mobile interface. There's nothing in the patent directed to</p>

<p>f3qgintc Page 33</p> <p>1 this idea that an instance of the interface itself has to move 2 from one location to another.</p> <p>3 If your Honor looks even at the face of the patent, 4 which it shows figure 15, it shows two instances of the same 5 mobile interface client is running on different --</p> <p>6 THE COURT: Just a moment. I have it.</p> <p>7 MR. BOHL: What this shows at 102a and 102b are two 8 instances of the mobile interface client at different locations 9 accessing the same information. So the agent itself, the 10 mobile interface itself is not mobile, but the user is able to 11 use the mobile interface to access the files and information 12 from one of a number of different locations.</p> <p>13 MR. LANTIER: May I address that.</p> <p>14 THE COURT: One minute.</p> <p>15 MR. LANTIER: Two points.</p> <p>16 THE COURT: One minute.</p> <p>17 MR. LANTIER: I apologize.</p> <p>18 THE COURT: Let me modify what I did: An interface 19 reflecting changing information through various connecting 20 devices allowing a user to select files and other information 21 from such devices.</p> <p>22 MR. BOHL: Your Honor, I believe that would be fine.</p> <p>23 THE COURT: Who wanted to speak?</p> <p>24 MR. LANTIER: This is Mr. Lantier.</p> <p>25 THE COURT: Mr. Lantier.</p>	<p>f3qgintc Page 35</p> <p>1 MR. LANTIER: And we agree with that; we agree that 2 the agent is not in the claim, and it's not in the claim term 3 mobile interface. The patent written description describes a 4 mobile interface agent. The patent written description never 5 uses the term "mobile interface."</p> <p>6 THE COURT: I'm not inputting an agent in the 7 definition.</p> <p>8 MR. LANTIER: I'm not asking you to, your Honor; in 9 fact, that's what Intellectual Ventures is asking you to do. 10 They're asking you to find that "mobile interface" and "mobile 11 interface agents" are synonyms and they cannot be synonyms.</p> <p>12 THE COURT: But I'm not faced with that issue here. 13 My definition doesn't say anything about agent. It doesn't 14 have to.</p> <p>15 MR. LANTIER: The functionality you are attributing to 16 the interface is agent functionality, not functionality with 17 interface to perform --</p> <p>18 THE COURT: No. An agent does something. Nothing 19 works in isolation. There's an agent at the source of these 20 things. I decline to do that. The definition will be as I've 21 read it.</p> <p>22 MR. LANTIER: If I can make one more point on the term 23 "mobile." The statement was made that there was nothing in the 24 specification in-patent to support the idea that the interface 25 itself would move from one device to another.</p>
<p>f3qgintc Page 34</p> <p>1 MR. LANTIER: Your Honor, I think that that definition 2 would still read the word "mobile" out of the claim term, and 3 I'd like to make a couple of points in response to the 4 arguments that were made.</p> <p>5 The first is with reference to the figure that is 6 before your Honor and the suggestion that the mobile interface 7 appear simultaneously on multiple machines but does not move, 8 as your Honor can see, 102a and 102b that are pointed to there 9 refer to the MIA, that is the mobile interface agent, not a 10 mobile interface. And as we discussed yesterday --</p> <p>11 THE COURT: Where does the word "agent" appear?</p> <p>12 MR. LANTIER: MIA above the word "client" refers to 13 mobile interface agent.</p> <p>14 THE COURT: Where is that?</p> <p>15 MR. LANTIER: It's in the figure that's on the screen. 16 It's a figure on the face of the patent, as well.</p> <p>17 THE COURT: I see, but it's not the claim.</p> <p>18 MR. LANTIER: That term is not in the claim. It does 19 appear in claim 7, but not in claim 1.</p> <p>20 THE COURT: I think what this means is that the client 21 is affecting the Windows PC and the client is affecting another 22 client or the same one is affecting the cellular telephone, and 23 then these, in turn, are reflected on the mobile interface.</p> <p>24 I don't think there's an agent involved here. I'm 25 declined to use that.</p>	<p>f3qgintc Page 36</p> <p>1 THE COURT: It does move from one device. It shows it 2 changes. Affecting changing information from various connected 3 devices as I put it. An interface reflecting changing 4 information from various connected devices allowing a user to 5 select files and other information from such devices.</p> <p>6 MR. LANTIER: To be clear, then, your Honor, your 7 construction means that the interface moves from one computer 8 to another computer. Is that correct?</p> <p>9 THE COURT: No.</p> <p>10 MR. LANTIER: So, that's the point I wanted to 11 address.</p> <p>12 THE COURT: I don't think it does. If it does, it 13 does, but I don't think it does.</p> <p>14 MR. LANTIER: Then, your Honor, respectfully, I don't 15 think that the definition reflects the word "mobile."</p> <p>16 THE COURT: I think it does. That's the way it's 17 going to be.</p> <p>18 Next is "retrieving" or "retrieved." IV wants 19 "accessing" or "accessed for use by the local device." 20 Citibank wants "requesting" or "requested and 21 obtaining/obtained for use by the local device." 22 I think "retrieving" is better than the others. It 23 needs no definition. I decline to give it a definition.</p> <p>24 The next is "user specific resources and information."</p> <p>25 MR. BOHL: And that's an agreed upon term, your Honor.</p>

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<p>1 THE COURT: Good, and so is "pointer." 2 MR. BOHL: Yes. 3 THE COURT: So, we're finished with '002, and we next 4 go to '574. The first term I'm asked to define, these are 5 agreed terms, so I don't need to deal with that. 6 Then we have the next one, "public key certificate." 7 IV suggests "a certificate that vouches for the trustworthiness 8 of a public key including by indicating that the public key was 9 issued by the issuer who was supposed to have issued it." 10 Citibank wants "specially constructed data structure 11 which is signed by a certification authority and contains a 12 user's public key, the user's identity, and some additional 13 parameters related to the validity of the certificate." 14 The claim reads as follows, and this is lines 18 of 31 15 of the claim: "In the certification system for secure 16 communications containing computer processes arranged in a 17 certification infrastructure, a method of requesting and 18 issuing a public key certificate, comprising, (a) at a 19 requesting computer process, generating a data structure 20 containing the data items required for a public key 21 certificate, including a public key, self-signing the data 22 structure and sending the signed data structure as a 23 certificate signature request to a computer process authorized 24 as an issuing certification authority, and (b) at said computer 25 process authorized as an issuing certification authority,</p>	<p>1 issues with the definition. I believe Intellectual Ventures 2 agrees on one of the issues, so I'll address that first; that 3 is that the original definition uses the word "certificate," 4 which is the claim term itself. The patent is very clear at 5 column 10, line 36 to 37 about what a certificate is. It is a 6 specially constructed data structure which contains the user's 7 public key and further contains unique identification of the 8 public key owner and some additional parameters related to the 9 validity of the certificate. 10 This is not a description of embodiment as stated -- 11 THE COURT: So your definition picks those terms up. 12 MR. LANTIER: That's correct, your Honor. I believe 13 that Intellectual Ventures agrees that the term "data 14 structure" -- 15 THE COURT: Give me a minute. 16 MR. LANTIER: Yes. 17 THE COURT: Mr. Thompson, what's wrong with Citibank's 18 suggestion? 19 MR. THOMPSON: I think it's not as good as the 20 construction that the Court provided initially in that there 21 are at least two things that are clearly objectionable, 22 including the addition of the language "specially constructed." 23 THE COURT: That comes right out of the 24 specifications. 25 MR. THOMPSON: Well, it actually is a little different</p>
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<p>1 verifying the authenticity of said request, and if authentic, 2 certifying and returning the data structure in a certificate 3 signature reply." 4 It goes on to deal with a new entity that wants to use 5 it, to the patent claims, invention -- to verify the signed 6 data structure sent from a sender to a receiver including 7 "verifying the authenticity of signatures iteratively, 8 beginning with a common point of trust." 9 Who is going to speak for IV? 10 MR. THOMPSON: Me, your Honor. 11 THE COURT: Mr. Thompson. Why can't I just put a 12 period before the word "including"? 13 MR. THOMPSON: Just to make sure that I'm centered -- 14 THE COURT: A certificate that vouches for the 15 trustworthiness of a public key proffered by the sender of 16 information or the receiver of information. 17 MR. THOMPSON: That would be fine with IV. The reason 18 that that language is written the way that it is is because 19 that is the construction that was given this term in the JPMC 20 case. For the purposes of consistency before the Court, we 21 proposed keeping that construction. 22 THE COURT: That's a good argument. 23 So, what does Citibank find faulty in the definition 24 we have? Who is speaking to this? 25 MR. LANTIER: I will, Mr. Lantier. There are three</p>	<p>1 in the specification. "A certificate is specially constructed 2 data structure which contains the user's public key," which 3 means that it contains the user's public key. That's what's 4 special about it. 5 While the specification is teaching what the invention 6 is about, every word of it doesn't necessarily inform the claim 7 and help a fact finder to figure out what is and without the 8 boundaries, so I think "specially constructed" doesn't add 9 anything. I think that the sentence that's being pointed to is 10 talking about -- 11 THE COURT: Here's what we'll do. We're going to take 12 both. The first sentence will be the following: A certificate 13 that vouches for the trustworthiness of a public key, period. 14 A certificate is specially constructed data structure, etc., as 15 in Citibank's suggestion. We'll combine both. 16 MR. THOMPSON: May I ask for one modification to that. 17 THE COURT: Yes. 18 MR. THOMPSON: Which is this "and some additional 19 parameters related to the validity of the certificate." 20 THE COURT: Yes. 21 MR. THOMPSON: That seems a little loose in the 22 context of claim language. 23 MR. LANTIER: Your Honor, it's their definition from 24 the patent. 25 THE COURT: Please don't argue unnecessarily. It's</p>

<p>f3qgintc Page 41</p> <p>1 right in the specifications. I'm willing to spell out what 2 "parameters" means, but I don't think there is anything -- 3 MR. THOMPSON: Your Honor, if you're committed to that 4 language, then we'll work with it. 5 THE COURT: Good. So we have that. The next two are 6 agreed. The next issue is "policy certification authority." 7 MR. THOMPSON: If I can address that, your Honor. 8 THE COURT: Let me read it first. You're going too 9 fast. 10 MR. THOMPSON: I may be able to say something that 11 would be helpful, though. 12 THE COURT: The only difference between the two is the 13 addition of the word "certification" before "authority." 14 MR. THOMPSON: May I just help in one way. 15 If you see a footnote in the claim language, here 16 there's a footnote that tells you something, which is that IV 17 has endorsed the Court's prior construction from the JPMC case. 18 Citi has come up with a slight modification of what the Court 19 adopted in Chase and IV is not objecting to it. 20 THE COURT: You don't disagree. 21 MR. THOMPSON: Okay. 22 THE COURT: So we'll use the Citibank point. Thank 23 you for pointing out footnotes. 24 "Revocation list." 25 MR. THOMPSON: It's the same issue.</p>	<p>f3qgintc Page 43</p> <p>1 from what's argued now, don't rehash your arguments, but if 2 there's something new and different that you want me to take 3 into consideration, put it in writing; otherwise, it will be 4 final. 5 MR. THOMPSON: If I may propose a way to do that. If 6 the Court would just issue an order with the understanding that 7 if a party has an issue with what's in the claim construction 8 order, they can move for reconsideration of a construction. 9 THE COURT: I don't want to do that because that puts 10 more of a burden on the party than I think it should have in 11 this kind of a proceeding. 12 MR. THOMPSON: Fair enough. 13 THE COURT: I'll do it this way. It amounts to the 14 same thing, but it eliminates the special burden on rehearing. 15 I want to tell you now, I don't want to rehash what you've 16 argued. What you've argued I've taken into consideration. 17 MR. LANTIER: Yes. One point of clarification. If 18 needed, following those submissions, your Honor may reschedule 19 a hearing. 20 THE COURT: I might. I might. 21 MR. LANTIER: So we can discuss -- 22 THE COURT: It depends what you say. 23 MR. LANTIER: Would it be helpful to set some kind of 24 time frame for the submission of the responses? 25 THE COURT: I'll set it in the order.</p>
<p>f3qgintc Page 42</p> <p>1 THE COURT: I'll go with what I did before. 2 Next is "Certifying and returning the data structure." 3 I think the Citibank construction is a better one. 4 MR. THOMPSON: If I could just add one caveat, your 5 Honor, which is, the construction we offered was the 6 construction the Court adopted in the Chase case. 7 THE COURT: The Citibank construction is a little more 8 meaningful. We'll take that. 9 "Common point of trust," I'll do what I did before. 10 MR. LANTIER: Your Honor, if I could briefly 11 interject. This is another one of the terms where there's not 12 disagreement between the parties; it's only an issue of whether 13 the slight clarification that it's the lowest point in the 14 hierarchy. 15 THE COURT: I think what I did before is sufficient, 16 and similarly with "point of trust in common with." 17 Application is agreed. And "validated," I don't have to do 18 anything. Just leave it the way it is. The next two are 19 agreed. And the next issue is "Data items required for a 20 public key certificate." I'll take what I did before, and 21 we're finished. 22 I think what I'll do next is issue the order in its 23 tentative version and allow either side to ask for -- you tell 24 me what you want to do. I think the easiest thing is to issue 25 it. And if either side wants to propose a change different</p>	<p>f3qgintc Page 44</p> <p>1 MR. LANTIER: Thank you. 2 THE COURT: It will be short, though. 3 Where is this case in terms of discovery? Let's say I 4 issue the order, what comes next? Do we have a case management 5 plan in the case? 6 MR. LIM: We have not, your Honor. I think we agreed 7 to stay discovery until after the Markman hearing. 8 THE COURT: I will then issue my order, set a date for 9 a conference. I usually do it off the record, but we'll do it 10 on the record in case anybody wants to argue anything. Then 11 we'll move right into a case management plan and set the stage 12 for what goes next. 13 MR. LIM: That would be great, your Honor. 14 THE COURT: I'll probably call for an agenda of what 15 you want to do. If there are going to be motions, I'd like to 16 know them and what they'll be, and then we can set a briefing 17 schedule, and then decide whether we want to have discovery 18 until the motion is decided or hold them off again. Thanks 19 very much. 20 MR. ADAMO: Just as a point of information, the patent 21 office deadline for deciding the '666 IPR is April 16. My 22 expectation is they're not going to ask for more time. We will 23 have a ruling from the patent office one way or another. 24 THE COURT: On whether it's valid or not? 25 MR. ADAMO: Whether it survives or not; yes. Of</p>

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1 course, as soon as we get it, they'll get it at the same time,
2 and we'll get a copy to the Court, come what may.

3 THE COURT: I don't think that should change what I'm
4 doing here.

5 MR. ADAMO: I just wanted to let you know just in case
6 it did in view of your other cases.

7 THE COURT: Thanks. I don't think I need all these
8 books. Can I give them back to you?

9 MR. ADAMO: After what you said, I thought you were
10 using this to fill in the gaps in the chambers library.

11 THE COURT: Since our budgets are cut, of course.
12 (Adjourned)

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